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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,836	12/14/1999	GUY A. COSMO	395-6	3014

7590 08/13/2002

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EXAMINER

SIPOS, JOHN

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/460,836

Applicant(s)

COSMO, GUY A.

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 6) ☐ Other: \_\_\_\_\_

***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

**Claims 9 and 12-16** are rejected under **35 U.S.C. 103(a)** as being unpatentable over the patent to Merritt (3,094,823) in view of Fiesser (5,475,964). The patent to Merritt shows a packaging machine with a feeder spool holding a folded packaging means, an inverting mechanism comprising of feed rollers 20,30 and V-shaped wires 50,51 that reposition and open the folded material so that the fold is in a vertical orientation and a sealing and severing means 55,56 downstream from the inverting mechanism comprising of a heated bar with a flat head and an opposing sealing surface with a sharp surface. The Merritt device lacks the specific type of sealer recited in the claims. The patent to Fiesser shows a packaging machine in which a tubular film containing articles is transversely sealed by opposing members wherein one is a heated flat bar 26 and a non-heated, sharp cutting surface 25 that provide a clean cut in the film. It would have been obvious to one skilled in the art to substitute the sealing mechanism of Fiesser for the sealing mechanism of Merritt to provide for a cleaner cut. The use of adjusting means (claim 14) to adjust the position of a well known mechanism would have been an obvious modification to one skilled in the art to permit the handling of different size articles.

**Claims 10 and 11** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Merritt in view of Fiesser, as applied above, and further in view of Fukuda (5,347,795) or Goodwin (3,766,710). The Merritt and Fiesser combination lacks the showing of gear connected pivot arms. . It would have been obvious to one skilled in the art to provide the sealing mechanism of Merritt with a supporting pivoting structure as shown by Fukuda or Goodwin so that a more synchronized operation of the sealing arms is achieved. In the case of Fukuda, the

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use of a piston instead of a motor to actuate the sealing arms would have been an obvious modification.

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***PRIOR ART***

The patent to Berg shows a tubular film cutting and sealing means that comprises of heated elements on one side of the tube and a non-heated cutter on the other side of the tube.


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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

  
**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**